

AMENDED IN ASSEMBLY APRIL 30, 2012

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1715

Introduced by Assembly Member Smyth

February 16, 2012

An act to amend Section 25297.1 of the Health and Safety Code, relating to underground storage tanks.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, as amended, Smyth. Underground storage tanks: local oversight programs.

Existing law generally regulates the storage of hazardous substances in underground storage tanks, including requiring underground storage tanks that are used to store hazardous substances to meet certain requirements. The State Water Resources Control Board is required to develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies that apply for this authority. The local agency's cleanup, abatement, or other actions under that program are required to be consistent with procedures adopted by the board and be based upon cleanup standards specified by the board or a California regional water quality control board.

This bill would require the board to recommend to the Legislature, *no later than January 1, 2014*, appropriate standards and measurements for judging a local agency's compliance with those cleanup standards. *The bill would make this requirement inoperative as of January 1, 2015.*

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25297.1 of the Health and Safety Code
2 is amended to read:
3 25297.1. (a) In addition to the authority granted to the board
4 pursuant to Division 7 (commencing with Section 13000) of the
5 Water Code and to the department pursuant to Chapter 6.8
6 (commencing with Section 25300), the board, in cooperation with
7 the department, shall develop and implement a local oversight
8 program for the abatement of, and oversight of the abatement of,
9 unauthorized releases of hazardous substances from underground
10 storage tanks by local agencies. In implementing the local oversight
11 program, the agreement specified in subdivision (b) shall be
12 between the board and the local agency. The board shall select
13 local agencies for participation in the program from among those
14 local agencies that apply to the board, giving first priority to those
15 local agencies that have demonstrated prior experience in cleanup,
16 abatement, or other actions necessary to remedy the effects of
17 unauthorized releases of hazardous substances from underground
18 storage tanks. The board shall select only those local agencies that
19 have implemented this chapter and that, except as provided in
20 Section 25404.5, have begun to collect and transmit to the board
21 the surcharge or fees pursuant to subdivision (b) of Section 25287.
22 (b) (1) In implementing the local oversight program described
23 in subdivision (a), the board may enter into an agreement with any
24 local agency to perform, or cause to be performed, any cleanup,
25 abatement, or other action necessary to remedy the effects of a
26 release of hazardous substances from an underground storage tank
27 with respect to which the local agency has enforcement authority
28 pursuant to this section. The board may not enter into an agreement
29 with a local agency for soil contamination cleanup or for
30 groundwater contamination cleanup unless the board determines
31 that the local agency has a demonstrated capability to oversee or
32 perform the cleanup.
33 (2) The implementation of the cleanup, abatement, or other
34 action shall be consistent with procedures adopted by the board

1 pursuant to subdivision (d) and shall be based upon cleanup
2 standards specified by the board or regional board.

3 (3) The board shall, *no later than January 1, 2014*, recommend
4 to the Legislature appropriate standards and measurements for
5 judging a local agency's compliance with the cleanup standards
6 specified pursuant to paragraph (2). *The requirement for submitting*
7 *a report under this paragraph is inoperative on January 1, 2015,*
8 *pursuant to Section 10231.5 of the Government Code, and shall*
9 *be submitted in compliance with Section 9795 of the Government*
10 *Code.*

11 (c) The board shall provide funding to a local agency that enters
12 into an agreement pursuant to subdivision (b) for the reasonable
13 costs incurred by the local agency in overseeing any cleanup,
14 abatement, or other action taken by a responsible party to remedy
15 the effects of unauthorized releases from underground storage
16 tanks.

17 (d) The board shall adopt administrative and technical
18 procedures, as part of the state policy for water quality control
19 adopted pursuant to Section 13140 of the Water Code, for cleanup
20 and abatement actions taken pursuant to this section. The
21 procedures shall include, but not be limited to, all of the following:

22 (1) Guidelines as to which sites may be assigned to the local
23 agency.

24 (2) The content of the agreements which may be entered into
25 by the board and the local agency.

26 (3) Procedures by which a responsible party may petition the
27 board or a regional board for review, pursuant to Article 2
28 (commencing with Section 13320) of Chapter 5 of Division 7 of
29 the Water Code, or pursuant to Chapter 9.2 (commencing with
30 Section 2250) of Division 3 of Title 23 of the California Code of
31 Regulations, or any successor regulation, as applicable, of actions
32 or decisions of the local agency in implementing the cleanup,
33 abatement, or other action.

34 (4) Protocols for assessing and recovering money from
35 responsible parties for any reasonable and necessary costs incurred
36 by the local agency in implementing this section, as specified in
37 subdivision (i), unless the cleanup or abatement action is subject
38 to subdivision (d) of Section 25296.10.

39 (5) Quantifiable measures to evaluate the outcome of a pilot
40 program established pursuant to this section.

1 (e) Any agreement between the regional board and a local
2 agency to carry out a local oversight program pursuant to this
3 section shall require both of the following:

4 (1) The local agency shall establish and maintain accurate
5 accounting records of all costs it incurs pursuant to this section
6 and shall periodically make these records available to the board.
7 The Controller may annually audit these records to verify the
8 hourly oversight costs charged by a local agency. The board shall
9 reimburse the Controller for the cost of the audits of a local
10 agency's records conducted pursuant to this section.

11 (2) The board and the department shall make reasonable efforts
12 to recover costs incurred pursuant to this section from responsible
13 parties, and may pursue any available legal remedy for this purpose.

14 (f) The board shall develop a system for maintaining a database
15 for tracking expenditures of funds pursuant to this section, and
16 shall make this data available to the Legislature upon request.

17 (g) (1) Sections 25355.5 and 25356 do not apply to expenditures
18 from the Toxic Substances Control Account for oversight of
19 abatement of releases from underground storage tanks as part of
20 the local oversight program established pursuant to this section.

21 (2) A local agency that enters into an agreement pursuant to
22 subdivision (b) shall notify the responsible party, for any site
23 subject to a cleanup, abatement, or other action taken pursuant to
24 the local oversight program established pursuant to this section,
25 that the responsible party is liable for not more than 150 percent
26 of the total amount of site-specific oversight costs actually incurred
27 by the local agency.

28 (h) Any aggrieved person may petition the board or regional
29 board for review of the action or failure to act of a local agency
30 that enters into an agreement pursuant to subdivision (b), at a site
31 subject to cleanup, abatement, or other action conducted as part
32 of the local oversight program established pursuant to this section,
33 in accordance with the procedures adopted by the board or regional
34 board pursuant to subdivision (d).

35 (i) (1) For purposes of this section, site-specific oversight costs
36 include only the costs of the following activities, when carried out
37 by the staff of a local agency or the local agency's authorized
38 representative, that are either technical program staff or their
39 immediate supervisors:

40 (A) Responsible party identification and notification.

1 (B) Site visits.

2 (C) Sampling activities.

3 (D) Meetings with responsible parties or responsible party
4 consultants.

5 (E) Meetings with the regional board or with other affected
6 agencies regarding a specific site.

7 (F) Review of reports, workplans, preliminary assessments,
8 remedial action plans, or postremedial monitoring.

9 (G) Development of enforcement actions against a responsible
10 party.

11 (H) Issuance of a closure document.

12 (2) The responsible party is liable for the site-specific oversight
13 costs, calculated pursuant to paragraphs (3) and (4), incurred by a
14 local agency, in overseeing any cleanup, abatement, or other action
15 taken pursuant to this section to remedy an unauthorized release
16 from an underground storage tank.

17 (3) Notwithstanding the requirements of any other provision of
18 law, the amount of liability of a responsible party for the oversight
19 costs incurred by the local agency and by the board and regional
20 boards in overseeing any action pursuant to this section shall be
21 calculated as an amount not more than 150 percent of the total
22 amount of the site-specific oversight costs actually incurred by the
23 local agency and shall not include the direct or indirect costs
24 incurred by the board or regional boards.

25 (4) (A) The total amount of oversight costs for which a local
26 agency may be reimbursed shall not exceed one hundred fifteen
27 dollars (\$115) per hour, multiplied by the total number of
28 site-specific hours performed by the local agency.

29 (B) The total amount of the costs per site for administration and
30 technical assistance to local agencies by the board and the regional
31 board entering into agreements pursuant to subdivision (b) shall
32 not exceed a combined total of thirty-five dollars (\$35) for each
33 hour of site-specific oversight. The board shall base its costs on
34 the total hours of site-specific oversight work performed by all
35 participating local agencies. The regional board shall base its costs
36 on the total number of hours of site-specific oversight costs
37 attributable to the local agency that received regional board
38 assistance.

39 (C) The amounts specified in subparagraphs (A) and (B) are
40 base rates for the 1990–91 fiscal year. Commencing July 1, 1991,

1 and for each fiscal year thereafter, the board shall adjust the base
2 rates annually to reflect increases or decreases in the cost of living
3 during the prior fiscal year, as measured by the implicit price
4 deflator for state and local government purchases of goods and
5 services, as published by the United States Department of
6 Commerce or by a successor agency of the federal government.

7 (5) In recovering costs from responsible parties for costs
8 incurred under this section, the local agency shall prorate any costs
9 identifiable as startup costs over the expected number of cases that
10 the local agency will oversee during a 10-year period. A responsible
11 party who has been assessed startup costs for the cleanup of any
12 unauthorized release that, as of January 1, 1991, is the subject of
13 oversight by a local agency, shall receive an adjustment by the
14 local agency in the form of a credit, for the purposes of cost
15 recovery. Startup costs include all of the following expenses:

16 (A) Small tools, safety clothing, cameras, sampling equipment,
17 and other similar articles necessary to investigate or document
18 pollution.

19 (B) Office furniture.

20 (C) Staff assistance needed to develop computer tracking of
21 financial and site-specific records.

22 (D) Training and setup costs for the first six months of the local
23 agency program.

24 (6) This subdivision does not apply to costs that are required to
25 be recovered pursuant to Article 7.5 (commencing with Section
26 25385) of Chapter 6.8.

27 (j) The inoperation of former paragraph (1) of this subdivision,
28 as it read on January 1, 2012, does not affect the validity of any
29 action taken by the Santa Clara Valley Water District before June
30 30, 2005, and does not provide a defense for an owner, operator,
31 or other responsible party who fails to comply with that action.